

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RICHARD A. ADAMS,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE NO.
)	1:05-CV-3308-TWT
IBM CORP.)	
)	
Defendant.)	

AFFIDAVIT OF KENNETH MORRISSEY

1.

I, Kenneth Morrissey, am over the age of twenty-one (21) years and competent to testify in the matters contained herein. This Affidavit is based upon my personal knowledge and is under oath.

2.

I am a citizen of the State of North Carolina.

3.

At all relevant times below, I was the Plan Administrator for the IBM Personal Pension Plan.

4.

When Plaintiff Charles Adams ("Adams") last retired from IBM in May of 2003, the IBM Personal Pension Plan determined a participant's benefit

by reference to a Personal Pension Account ("PPA"). Every month a participant's PPA accumulates "pay credits" at a rate of 5% of the employee's salary and "interest credits" at a rate one percentage point higher than the rate of return on one year treasury securities.

5.

When a participant retires, he/she may withdraw the account balance as a lump sum, convert the account balance into an immediate life annuity, or defer the receipt of a lump sum or a life annuity until a later date. If the participant elects to defer receipt of a lump sum or life annuity, he/she continues to accumulate interest credits until his PPA balance is withdrawn or converted into a life annuity.

6.

The Plan requires the participant to immediately elect the distribution of the PPA account balance – or to "commence the benefit"- after the employee's separation from IBM. The Plan Administrator may delay the distribution of benefits until proper, written application for such benefits has been made to the Employee Service Center ("ESC").

7.

The Plan does not pay any interest on a lump sum distribution beyond the Plan's normal retirement age of 65.

8.

Until Adams last retired on May 31, 2003, he was a Plan participant in PPA.

9.

The IBM Savings Plan Payment Rights Notice attached as Exhibit A has no bearing whatsoever on IBM's Personal Pension Plan. Rather, the Notice concerns only the IBM Savings Plan – a separate plan.

10.

The April 18, 2005 Projection Statement Letter to Adams attached as Exhibit B contains an estimate of his PPA benefits. The letter clearly provides that an employee must begin to receive a lump sum benefit by age 65, or, if later by the first day of the month following the date of separation. See Eligibility Information in Exhibit B.

11.

After Adams retired from IBM, he did not elect receipt of his distribution from the IBM Personal Pension Plan on a timely basis. He did not complete the required pension elections forms to receive his lump sum distribution until September, 2005. Through correspondence, Adams sought interest on his lump sum distribution from the time of his retirement on May 31,

2003 until his election in September 2005. As the plan administrator, I denied this request because Adams failed to make a timely election distribution when he retired on May 31, 2003 and because the plan does not pay any interest to a terminated participant on a lump sum distribution beyond the plan's normal retirement age of 65. When Adams separated in May 2003, he was 67 years old. I communicated this decision to Adams in a series of letters from May 2004 through July 2005. As the Plan Administrator, I also have the authority under Article 12.1(c) of the Plan Documents to delay distribution of benefits until a proper written application for benefits has been made.

12.

I declare pursuant to 29 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct and based upon my personal knowledge.

FURTHER AFFIANT SAYETH NOT.

This 12th day of July, 2006.

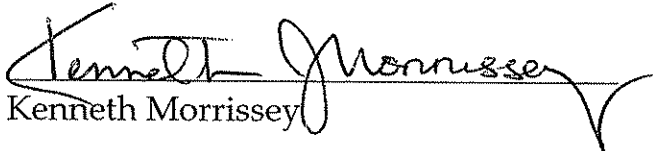
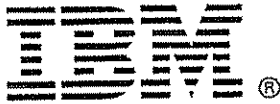

Kenneth Morrissey

EXHIBIT A



Save

The IBM Savings Plan Payment Rights Notice

Statement Date 06-03-2003

300214
RICHARD A ADAMS
2401 WINSHIRE DR.
DECATUR GA 30035

Federal law requires that you receive information about any rights that you may have associated with a payment from the IBM Savings Plan. Please review the following information regarding your rights.

You have 30 days, to the extent applicable, to consider whether to:

- ☐ Consent to this payment;
- ☐ Consent to a form of payment other than the normal form of payment; and
- ☐ Elect a direct rollover and the tax consequences of not electing one.

If you are separated from service and your balance at that time or any subsequent time does not exceed \$5,000, you have 30 days to consider whether to elect a direct rollover and the tax consequences of not electing one. Only the Withholding Notice and the Special Tax Notice Regarding Plan Payments below may be applicable to you.

By confirming a payment request, you are waiving your right to the applicable 30-day notice periods. If you choose not to waive this right, you should not confirm your request. However, if you wish to receive a payment at any subsequent time, you will be asked again whether you wish to waive your right to the applicable 30-day notice periods. Please note that your decision to waive your right to the applicable 30-day notice periods does not obligate the IBM Savings Plan to make the payment within 30 days.

Also, by confirming a payment, you are acknowledging that you have received, reviewed, and comprehend the information contained in the following sections of this Notice:

- ☐ Notice Regarding Commencement of Benefits;
- ☐ Withholding Notice (applies to the portion of a payment that is not eligible for rollover); and
- ☐ Special Tax Notice Regarding Plan Payments (applies to the portion of a payment that is eligible for rollover).

Notice Regarding Commencement of Benefits

You may choose to delay the commencement of your benefits until age 70-1/2.

Explanation of the Optional Forms of Payment

Below are the payment options and a description of each of those options under the IBM Savings Plan. Whether you are eligible for a particular payment option may depend on your employment status, your financial need, and/or your account balance.

Payment Options While Employed by IBM

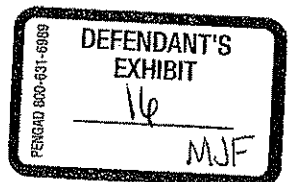
While you are employed by IBM, the following payment options may be available to you:

- ☐ Regular Withdrawal—You may request a regular withdrawal once you reach age 59-1/2, even if you do not have an immediate and heavy financial need. A regular withdrawal will reduce the following accounts, in the order listed, up to the amount that is available in each account:
 - Pre-87 After-Tax
 - Post-86 After-Tax
 - Rollover
 - Lotus Company Match
 - Prior Plan
 - Unmatched Deferrals
 - Matched Deferrals
 - Employer Match
 - Unison Employer Match

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delivered by **Hewitt**

01642-300214



☐ Lotus Withdrawal—If you had a balance converted from the Lotus plan. You may request a Lotus withdrawal even if you do not have an immediate and heavy financial need. A Lotus withdrawal will reduce the following accounts, in the order listed, up to the amount that is available in each account.

- Pre-87 After-Tax
- Post-86 After-Tax
- Lotus Company Match (only available if you have five years of service as measured from adjusted hire date)
- Prior Plan

You may request up to four regular and/or Lotus withdrawals a year, subject to a minimum withdrawal amount of \$500 or 100% of the amount available, whichever is less. You may elect to have the portion of your regular or Lotus withdrawal that was invested in the IBM Stock Fund paid to you in shares or cash. If you elect to take shares, the Stock Fund will be depleted first, according to the hierarchy above, before all of your other funds.

☐ Hardship Withdrawal—If you have an immediate and heavy financial need, based on plan requirements, and you have no other resources reasonably available to you to meet that need, you may request a hardship withdrawal. Your withdrawal amount cannot exceed the amount that is necessary to satisfy your need, plus any additional amounts necessary to pay any federal, state, and local income taxes or penalties reasonably expected to result from the withdrawal. You must provide the documentation required by the IBM Savings Plan to prove your immediate and heavy financial need and the amount necessary to satisfy that need. A hardship withdrawal will be made only in cash. A hardship will reduce the following accounts in the order listed, up to the amount that is available in each account.

- Pre-87 After-Tax
- Post-86 After-Tax
- Rollover
- Lotus Company Match
- Prior Plan
- Unmatched Deferrals (excludes earnings since December 31, 1987)
- Matched Deferrals (excludes earnings since December 31, 1987)

Payment Options After Total and Permanent Disability or Separation From Service With IBM

If your account balance is greater than \$5,000 after you have become totally and permanently disabled or separated from service with IBM, you may have one or more of the following payment options available to you.

☐ Regular Withdrawal—You may request to have a portion (flat dollar amount or a percentage) of your account balance paid to you, in a single payment, at any time. A regular withdrawal will reduce the following accounts, in the order listed:

- Pre-87 After-Tax
- Post-86 After-Tax
- Rollover
- Lotus Company Match
- Prior Plan
- Unmatched Deferrals
- Matched Deferrals
- Employer Match
- Unison Employer Match

You may request up to four regular withdrawals a year, subject to a minimum withdrawal amount of \$500 or 100% of the amount available, whichever is less. You may elect to have the portion of your regular withdrawal that was invested in the IBM Stock Fund paid to you in shares or cash. If you elect to take shares, the Stock Fund will be depleted first, according to the hierarchy above, before all of your other funds.

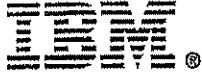
☐ Lump-Sum Distribution—You may request to have your entire account balance paid to you in a single payment. You may request to have the portion of your lump-sum distribution that was invested in the IBM Stock Fund paid to you in shares or cash.

For example, if you had an account balance of \$100,000, you could take the entire balance in a single payment.

☐ Calculated Installments—You may request to have your account balance distributed to you in the form of calculated installments, which are considered periodic payments. With calculated installments, you elect the number of years (between 2 and 10, or up to 20 years if you're a former Ameritech employee) over which you would like to receive your annual payments. Each installment amount varies and is calculated by taking your account balance and dividing it by the number of payments remaining. The balance remains invested in the funds you have selected, and you may continue to change your investment mix.

For example, if you had an account balance of \$100,000 and you elected to receive annual installments for a period of ten years, your first annual installment would be calculated by taking \$100,000, divided by 10, which is the number of payments remaining. The first payment would equal \$10,000.00. Your second payment would be calculated by dividing your account balance (the amount remaining after your first payment, adjusted for gains and losses) by 9.

EXHIBIT B



Received 4/23/05

Richard A. Adams
2401 Winshire Drive
Decatur, GA 30035
USA

Fidelity NetBenefits®
<http://netbenefits.com>
IBM Employee Services Center 7
1-800-796-9876

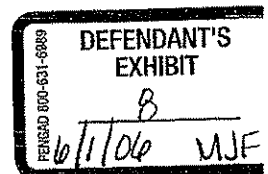
Hearing Impaired Access
1-800-426-6537

International Access

Dial AT&T Direct Service Access number, then 800-796-9876, or if AT&T Direct Service Access is not available, make a collect call to 919-784-8646. AT&T service access numbers are available online at www.att.com/traveler or by calling 1-800-331-1140.

April 18, 2005

RE: Projection Statement
Plan Name: IBM Personal Pension Plan "the Plan"



Dear Richard Adams:

We have estimated your benefits payable from the Plan based on certain detailed assumptions and data that IBM has in its personnel records. If these records contain any errors, the amounts shown are subject to change. Your actual compensation experience and service history will determine your actual benefits at the time you elect to commence. This statement contains important information; please review it carefully and report any errors to the IBM Employee Services Center.

Initiating Your Benefits

If you requested pension paperwork and would like to begin receiving your benefit payments within the next 90 days, please review the enclosed checklist, gather the materials indicated and contact the IBM Employee Services Center.

If you are not ready to begin receiving your benefit payments, please call the IBM Employee Services Center at least 45 days, but not more than 90 days, before your desired payment date.

Information regarding eligibility to commence your benefits is available later in this statement.

Getting Additional Information

Your Summary Plan Description provides further details about your benefit plan including special terms, descriptions of payment methods, eligibility dates, and other plan provisions. For a copy of the Summary Plan Description or for additional questions, please call the IBM Employee Services Center at 1-800-796-9876 on business days (excluding holidays recognized by the New York Stock Exchange) between 8:00 a.m. and 12:00 p.m. or between 2:00 p.m. and 8:00 p.m., Eastern time, to speak with a service representative. You may also access Fidelity Netbenefits at netbenefits.com for benefit information online.

For information about Social Security benefits, call the Social Security Administration directly at 1-800-772-1213.

If eligible, you may also receive information about your Health & Welfare plan(s) in a separate mailing.

Eligibility Information

You may begin to receive your pension benefit as of the first day of any month after your separation from employment. You may also elect to begin to receive a portion of your benefit as of the first day of any month and the rest of your benefit as of the first day of any subsequent month. However, you may not begin to receive your benefit later than the first day of the month following your 65th birthday, or, if later, following the date you separate employment from IBM.

Determining Your Distribution Date

Choosing the date that you will begin to receive your pension benefit is an important decision. If you elect a lump

sum, the amount of your lump sum will be larger the longer you wait to receive your benefit. If you elect an annuity, generally the amount of your annuity payments will be larger the longer you wait to begin receiving your benefit. However, this may not be the case in several situations, such as when the interest rate that is used to convert your Personal Pension Account to an annuity changes.

If you elect to receive your pension benefit in the form of an annuity, you will need to select the date "as of" which your annuity will begin (this is your Benefit Commencement Date). Your monthly annuity payments will start as of that date. We make every effort to process your pension payments as quickly as possible; however, you will not receive the actual first payment until we complete the processing. When the actual payment begins, you will receive all the monthly annuity payments you missed in a lump sum. For example, if you wish to begin your annuity payments as of June 1 and we are unable to actually start payments until August 1, on August 1 you will receive your August monthly annuity payment, as well as your June and July monthly annuity payments.

If you elect to have your Benefit Commencement Date be a date that is before the date of this statement, the law requires that your benefit under the Plan be subject to special rules, including the following:

- You will receive interest on the monthly annuity payments for the months before the date actual monthly payments begin. For example, if this statement is dated June 15, you elect to begin your annuity payments as of June 1, and we are unable to actually start payments until August 1, you will receive on August 1: (a) your August monthly payment, (b) your July monthly payment plus one month of interest, and (c) your June monthly payment plus two months of interest.
- Your spouse as of the date your actual monthly payment begins must consent to your election of a form of payment and a Benefit Commencement Date. Your spouse's consent must be in writing and must be notarized by a U.S. notary.

If you would like additional calculation details, you can access benefit information online through Fidelity NetBenefits at netbenefits.com or contact the IBM Employee Services Center.

Please Keep This Statement With Your Records For Future Reference

We have enclosed a booklet called "Annuity vs. Lump Sum Decision Guide" that gives information on what kind of things you should think about when deciding between a lump sum and annuity payments. If you would like additional information based on your own estimated benefit, please contact the IBM Employee Services Center.

4/23/05

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BENEFIT DATA as of April 18, 2005

Birth Date:	09/29/1935		
Hire Date:	11/12/1956	Vesting Percentage:	100%
Termination date:	05/31/2003		

ACCRUED BENEFIT as of April 18, 2005

This section reflects your Accrued Benefit amount payable immediately.

Your current cash balance account value from the Plan is:

Personal Pension Account: **\$151,349.10**

If you are married when your pension benefit begins to be paid, your Normal Form of Benefit will be the Qualified Joint and Survivor Annuity (QJSA). The QJSA under the Plan is the **50% Joint and Survivor Annuity** with your spouse as beneficiary. If you are married when your pension benefit begins, you will receive your benefit as a **50% Joint and Survivor Annuity**, unless your spouse consents to your election of another available form of payment or to another beneficiary other than himself/herself. Federal law requires that your spouse's consent to another form of payment or to another beneficiary be in writing and notarized by a U.S. notary (unless you elect a Joint and Survivor Annuity with a survivor percentage that is 50% or greater and your spouse is your beneficiary). Spousal consent is required because your spouse must waive his/her right to the payments he/she could receive under the QJSA option. Please see the Spousal Consent section for more details. You also have the right to rescind your payment option election and elect the QJSA payment option at any time up until benefit payments begin. Please see Your Benefit Estimate section to review the optional forms of benefit and the monetary value that each may provide to you and your spouse, if applicable.

If you are not married when your pension benefit begins, your qualified Normal Form of Benefit will be the **Single Life Annuity**.

Regardless of your marital status, please see the Payment Option Descriptions section for a more detailed description of all your available payment options.

Federal tax law requires 20% of any qualified taxable lump sum distribution be withheld. The qualified portion of your IBM Pension Plan payment is eligible for a direct rollover into an Individual Retirement Account (IRA) or a qualified plan of another employer, which can preclude the required withholding. Please review the enclosed rollover information that will explain your options further. The excess portion of any lump sum cannot be rolled over into a tax-qualified retirement plan. In this case, a W-4 tax form is completed and Federal taxes are withheld.

YOUR BENEFIT ESTIMATE

This benefit estimate is based on the information shown in the Assumptions section below. The benefits presented are only an estimate of what you **could** receive. Some payment options may be available with respect to only part of your benefit. The actual dollar amount you would receive each month is based on your age, your beneficiary's age, and the current interest rates under the Plan at the time the payment begins. Your actual benefit will be determined at the time you elect to commence benefits under the Plan.

Note: The qualified pension benefit provided under all of the payment options within each column below is of approximately equal relative value. Relative values allow you to compare the value of a distribution payable in different forms. The relative value of an optional form of payment is determined by comparing its value to the value of the single Life Annuity that would commence at the same time. Refer to the Calculation Notes for additional information on the assumptions used to determine relative values.

Assumptions

version #1

Termination Date	05/31/2003
Benefit Commencement Date	06/01/2003
Joint and Survivor Percentage	50%

Single Form Payment Options — you may receive your benefit in a single form of payment such as an annuity or a lump sum. The options shown in this section represent the single form payment options available to you.

Lump Sum — a distribution of your benefit through a one-time payment.
\$151,349.10

Single Life Annuity — the form of pension income that pays you the full amount of your monthly benefit, less any reduction for early retirement, if applicable. This option does not provide a continuing income to a survivor. In the event of your death, payments stop completely.

Qualified Pension Benefit \$1141.00 $\times 12 = 13692.00$

50% J&S Annuity to ee	\$948.63	50% J&S to spouse	474.15
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Calculation Notes:

- All payments are paid in monthly installments unless otherwise noted.
- The estimates in this statement are determined based on your actual pension-eligible earnings as of a specified date plus your projected pension-eligible earnings from that date until your projected date of termination. Your projected pension-eligible earnings are determined based on the salary/OTE rate in effect on the specified date and are adjusted for pay increases in accordance with the pay increase assumptions listed in the Assumptions section. The specified date varies depending on the date this statement was run: The specified date is the first day of the month, two months prior to the current month if this statement was run between the first of the month and before the Friday following the second Tuesday of the same month. Otherwise, the specified date is the first day of the prior month.
- Other payment options may be available. For example, the percentage for joint and survivor annuities may be any whole percentage. Between 10% and 100% in 10% increments.
- If you would like to see a statement of financial effect and relative values for any presently available optional form of benefit that is not listed in this statement, please contact the IBM Employee Services Center.
- Relative Value — The relative value of any qualified pension benefit payable in a lump sum form was determined using the Annuity Conversion Interest Rate specified in the Assumptions section above and average life expectancy based on the GAR-94 mortality table (the basis prescribed by Internal Revenue

Code). The relative value of any qualified pension benefit payable in an optional annuity form was determined using the Annuity Conversion Interest Rate specified in the Assumptions section above and average life expectancies based on the GAR-94 mortality table, with your beneficiary's age, if applicable, reduced by two years from the associated age in the table. Significant variations between actual variables and these assumed variables may have a material impact on the relative value of any optional form to the Single Life Annuity form. If you would like more information about the actuarial assumptions used to determine relative values, please contact the IBM Employee Services Center. The relative value of payments ultimately made under an optional form of payment will depend on how long you and, if applicable, your beneficiary live.

PAYMENT OPTION DESCRIPTIONS

Following are brief descriptions of the payment options available under the Plan. Make your choices carefully. Please remember that you may not make or change an election after your payments have begun. You may wish to consult a qualified tax advisor for assistance.

Lump Sum – a distribution of your benefit through a one-time payment.

Single Life Annuity – the form of pension income that pays you the full amount of your monthly benefit, less any reduction for early retirement. This option does not provide a continuing income to a survivor. In the event of your death, payments stop completely.

Joint and Survivor Annuity – provides monthly payments to you for as long as you live. After your death, the person you designated as your beneficiary as of the date your pension payments began, if he or she is still living, will be paid a percentage of what you were receiving for the rest of his or her life. The percentage may be any whole percentage between 10% and 100% in 10% increments. The amount is less than the Single Life Annuity benefit since the Plan must provide income to cover more than one lifetime. The benefit is reduced, based on the age difference between the employee and the joint annuitant, so that the amount paid over the course of the two lifetimes is actuarially equivalent to the amount that would have been paid only during one lifetime.

Split Payment Option – allows you to combine payment methods and split your account balance between a lump sum and an annuity in 25% increments of your account balance.

Partial Distribution Option – allows you to take an immediate distribution of a portion of your balance (in 25% increments) as a lump sum or an annuity if you are not yet age 65 and defer the remaining balance. You may commence the remaining balance at any time but no later than the first day of the month following your 65th birthday and you must take a total distribution on that remaining balance.

Other Payment Options – if you participated in the Plan before July 1, 1999, you may have additional payment options with respect to the portion of your benefit earned before July 1, 1999. For example, the percentage of a Joint and Survivor Annuity for any benefits earned before July 1, 1999, may be any whole percentage up to 100% and you may designate more than one beneficiary. You may also have additional annuity, level income, and split annuity/lump sum options. Please contact the IBM Employee Services Center for further information about these options, including the financial effect and relative values of such options.

SPOUSAL CONSENT

Please remember, if you are married on your Benefit Commencement Date, your spouse must provide notarized written consent for you to elect an annuity other than a Qualified Joint and Survivor Annuity (unless you elect a Joint and Survivor Annuity with a survivor percentage that is 50% or greater and your spouse as beneficiary), or to select a different beneficiary. If however, your Benefit Commencement Date is before the date of this statement, your spouse as of the date your benefits actually begin to be paid is required to consent to the distribution, regardless of the form of benefit you elect. Federal law requires that your spouse's consent, if required, be in writing and notarized by a U.S. notary. Spousal consent is required when your spouse must waive his/her right to the payments he/she could receive under the Qualified Joint and Survivor Annuity (QJSA) option.

ABOUT YOUR STATEMENT

This statement is based on the information listed in the Benefit Data section and the assumptions listed in Your Benefit Estimate section of this statement. If there is an error in these sections, the calculation of your retirement amount may be affected. If you see any problem with the information listed, or would like a benefit statement based on different assumptions, please call the IBM Employee Services Center at 1-800-796-9876 *immediately*.

This statement is not intended to create, nor will it be construed to form, a contract or promise for either employment or a benefit. Participation in the Plan is subject to all applicable terms and conditions of the Plan. Full details about the Plan are provided in the official Plan Document, which governs the operation of the Plan. Any differences between this statement and the Plan Document are not intended, but if any differences are found to exist, the Plan Document will govern. The Company reserves the right to make all revisions and interpretations with respect to the Plan described here. The decisions of the Company shall be final and binding upon all participants.

The Company reserves the right, without your consent or concurrence, to amend, modify, suspend, replace, or terminate the Plan, in whole or in part, including any form of coverage thereunder, by appropriate Company action. If the Plan is amended, modified, suspended, replaced or terminated, you or other employees (or former employees), either while you are actively employed or after you retire, may not receive benefits as described in this statement. Your vested rights will be limited to those specifically provided for in the Plan at the time of your termination of employment.